

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.9 OF 2004

The Commissioner of Customs
(General & CFS, Mulund),
Ballard Estate, New Customs
House, Mumbai

.. Appellant.

V/s.

M/s.Shiva Corporation

.. Respondent.

Mr.H.V. Mehta for the appellant.

None for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 7TH JUNE, 2006.

P.C. :

Heard learned counsel for the Revenue. None for
the respondent in spite of service.

2. The appellant has raised following substantial
question of law :

Whether the order dated 11.11.2003 passed in the
present case is sustainable in law in view of
the facts that the judgment in Akash Stones
Industries had been overruled by the Division
Bench of the Tribunal in case of Sophisticated
Marble & Granite Industries V/s. Commissioner
of Customs Mumbai vide order dated 18th
December, 2003. The order dated 18th December,
2003 was challenged in Writ Petition no.39 of
2004. The Hon'ble High Court had dismissed the
writ petition by detailed order on 22nd January,
2004. Hereto annexed and marked Exhibit 'F' is
the copy of order dated 18th December, 2003 of
CESTAT and Exhibit 'G' is the copy of order of
this Hon'ble High Court dated 22nd January,
2004 ?

3. The factual matrix of the matter is that in the impugned order dated 11th November, 2003, the CESTAT has relied upon the order of the Tribunal in the case of Akash Stone Industries and others V/s. Commissioner of Customs dated 17th May, 2002 while reducing the redemption fine and penalty imposed in the order-in-original and confirmed by the first appellate authority.

4. It is not in dispute that the judgment of the Tribunal delivered in the case of Akash Stone Industries (supra) came to be referred to the third Judge in view of split judgment of the bench. Ultimately, majority view of the Tribunal dated 17th December, 2003 in the case of Sophisticated Marble and Granite Industries V/s. Commissioner of Customs, Mumbai resulted in overruling the earlier view taken in the case of Akash Stone Industries (supra). However, the Tribunal had no benefit of the order passed by the Division Bench in the case of Sophisticated Marble & Granite Industries (supra) since it came to be decided subsequent to the order impugned in this appeal.

5. In the above view of the matter, the order impugned in the present appeal dated 11th November, 2003 is liable to be set aside. The proceedings are liable to be remitted back to the Tribunal for decision afresh in the light of the subsequent judgment of the Tribunal

in the case of Sophisticated Marble and Granite Industries (Supra).

6. The Tribunal is expected to decide and dispose of the appeal as expeditiously as possible at any rate within three months from the date of receipt of the copy of this order.

7. The Customs Appeal stands disposed of in terms of this order keeping all rival contentions open with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)